

Indiana Department of Environmental Management

Lori F. Kaplan, Commissioner

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(Text does not include verbatim comments)

Pam O'Rourke's introduction of Lori:

I am honored to introduce to you the commissioner of the Indiana Department of Environmental Management, Lori Kaplan, who will open the training course for us this morning. Governor Frank O'Bannon appointed Ms. Kaplan commissioner of IDEM on April 1, 1999. Ms. Kaplan grew up in the Chicago area. She earned her bachelor's degree from the University of Illinois in Champaign-Urbana and after some real-world work experience, she earned a law degree from the Indiana University School of Law in Indianapolis. Before coming to IDEM, she spent six years with the Indiana Department of Natural Resource, serving four years as chief legal counsel and two years as deputy director of the Bureau of Water and Resource Regulation. At DNR, she supervised the divisions of Soil Conservation, Water, Entomology & Plant Pathology, Fish & Wildlife and Outdoor Recreation. And while at DNR, she had the opportunity to work closely with the Law Enforcement Division in a variety of criminal matters, including investigations of the Endangered Species Act that involved the sale and trafficking of reptiles and amphibians. She also served as one of Indiana's Natural Resource co-trustees. Since coming to IDEM she has continued her involvement in enforcement and regulatory matters which include her participation in the Great Lakes Commission and the Environmental Council of States. As IDEM commissioner, she oversaw the investigation one of the largest fish kills in Indiana history. During that investigation, IDEM worked with the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, Department of the Interior and the Indiana Department of Natural Resources to file suit against the parties responsible for the incident.

Ladies and gentlemen, Lori Kaplan, commissioner of the Indiana Department of Environmental Management.

Thank you Pam. Good morning everyone. I am pleased to be with you again.

Pam asked me to join you today, just as she did about a year ago, to welcome you to Indianapolis and to talk about the Indiana Department of Environmental Management and, in particular, some of the successes we have had in the enforcement arena. We are proud that the Midwest Environmental Enforcement Association chose Indianapolis as the site for its Criminal Environmental Enforcement for Regulators course.

Jim Triner and the rest of the MEEA staff chose a great time to come to Indianapolis. If you have not had the chance to visit Monument Circle just around the corner, I encourage you to do so. It is the heart of Indianapolis and Indiana. It is a beautiful place anytime of the year, but especially now. The monument, built more than 100 years ago to honor Indiana's Civil War veterans, becomes the World's Largest Christmas tree, complete with brightly-colored lights and festive holiday decorations. In addition, Indianapolis offers a number of other attractions, including a little automobile racetrack you may have heard about called the Indianapolis Motor Speedway.

Within walking distance of your hotel are the RCA Dome, home of our Indianapolis Colts NFL football team; the Conseco Fieldhouse, home of our NBA Pacers basketball team; the Eiteljorg Museum of Western and Indian Art; the NCAA Hall of Fame, Circle Centre Mall; and the White River State Park, which includes the IMAX Theater, the White River Gardens and the Indianapolis Zoo. Even the zoo's animals have dressed up and decorated their home for the holidays. They celebrate the holiday season with their own special party called Christmas at the Zoo and I encourage you to visit them, especially after dark when twinkle lights transform their confines into a magical setting.

As you may know, this is the second MEEA training event to come to Indianapolis in a year's time. Last fall, Indianapolis played host in this hotel to your organization's 50th Periodic Training Conference and today, just like then, we are privileged to have you in our beautiful capital city. I would like to begin my remarks today with the same words that I shared last year, because I believe they are just as pertinent for you to hear as your colleagues who attended last year's training conference.

I hope you will find this training course useful so that you may return home with new insights, tips and tools to help you apply and enforce the myriad of state and federal environmental rules and regulations. We all have tough jobs in this business but your jobs, as enforcers are perhaps the toughest.

People in my state and throughout our country too often perceive government as an obstacle to overcome, not a partner in what they do.

To some people, the phrase "I'm from the government and I'm here to help" is perceived as an oxymoron, something to laugh at. But when we say that, when you say that, we mean it literally – we really are here to help.

One of our biggest challenges is to work on reversing how our customers, both the voluntary and involuntary kind, think of us: to shift the paradigm from "obstacle" back to "public servant."

Our job is to demonstrate to those we serve that we really are here to help them accomplish their goals but in a way that protects the environment. Because when we do that, we protect, we nurture, and we add to everyone's quality of life.

As enforcers of those "dreaded" environmental rules and regulations, a field strewn with land mines if ever there was one, you are on the front line convincing the public that we ARE here to help them.

Our environment, just like Indianapolis at this time of year, is special but the environment is special 365 days a year. I know you join with me in your desire to keep our environment special for years to come. That is why you have come to Indianapolis to learn about your role in criminal environmental enforcement. Let me begin by talking about environmental enforcement at the Indiana Department of Environmental Management.

IDEM is the state agency with regulatory authority to enforce Indiana's environmental laws and regulations, which are in place to improve the quality of our state's air, water and land.

Contained within these laws and regulations, as is probably the case with many of your states, is the authority to file charges against those people who criminally violate our environmental laws.

IDEM is not the only agency in Indiana with this authority. However, I would like to spend a little bit of time to explain some of the criminal cases taken on by my agency.

IDEM became a state agency in 1986. At that time the Indiana General Assembly gave it both administrative and criminal enforcement authority to enforce the provisions of our state's environmental laws. Administrative enforcement, through the issuance of Violation Letters, Notices of Violation and Commissioner's Orders, are the enforcement tools IDEM has most commonly used and continues to use to this day. However, for those egregious violators, those truly "bad actors," who had "intent and knowledge", we have taken, and will continue to take, criminal enforcement action in order to maintain the integrity of our environmental statutes and rules.

One of our earliest criminal cases, filed in April of 1987 against the C&M Plating Corporation, involved the improper storage and disposal of hazardous waste and the falsification of discharge monitoring reports. It was an inspector who started this case.

He had noticed during a routine inspection that the company was illegally discharging plating waste into the settlement lagoons of a small community.

At the conclusion of the criminal investigation, a special prosecutor filed 454 felony counts against the two owners of the company and the corporation.

When all was said and done, the corporation paid a \$250,000 fine, the corporate officers each served one-year sentences, and restitution was paid.

In a more recent case, the Rock Island Refining Corporation paid a \$3 million fine and pled guilty to one felony and two misdemeanor violations of the Clean Water Act and the Resource Conservation and Recovery Act for illegal discharges into a publicly-owned wastewater treatment facility.

And lastly, in a case which concluded in 1999, an individual was charged and found guilty of two counts of conspiracy – a Class D felony – and served a jail sentence and paid more than \$6,000 in restitution for the illegal discharge of wastewater into a sanitary sewer.

In recognition of the importance of criminal enforcement provision, the Indiana General Assembly, in its 2000 Legislative Session, passed a law which doubled the criminal fines for people who intentionally, knowingly or recklessly violate certain environmental laws, rules or standards.

In particular, a person convicted of a Class D felony may be fined up to \$50,000 a day for each violation and up to \$100,000 a day if the conviction is for a violation committed after a first conviction.

In Indiana, our elected county prosecutors bring most of our criminal cases in local county circuit and superior courts after being referred by our agency.

And we occasionally work with our friends and partners at the U.S. Environmental Protection Agency and federal Department of Justice in filing major cases in federal court.

A case to illustrate my point is one where IDEM worked with the **Indiana Department of Natural Resources** and the U.S. EPA in an investigation of an incident that began just about a year ago. An automotive supplier and its environmental consultant discharged a toxic chemical into the White River. This chemical killed virtually every fish in the river for 50 miles between Anderson and Indianapolis. For about 16 straight weeks, we worked with our partners to find out what happened, when it happened and why it happened. To say the least, it was an extremely trying time for my agency. But with our partners, we prevailed, filing a civil suit in late April against Guide Corporation, the automotive supplier, and Crown Environmental, the environmental consultant. We have not as of today brought the suit to a successful end. The wheels of justice may turn slowly, but they are turning.

I am confident that we will succeed and responsible parties will pay for their actions and pay to restore the White River, which flows through Indianapolis just a few blocks from this hotel.

Staff from IDEM investigated the cases I just described. The key word being "staff." In emphasizing this word, I mean that these cases involved not only our criminal investigators but our compliance inspectors, enforcement case managers and attorneys as well.

As you will learn this week, the teaming of environmental scientists with criminal investigators and attorneys ensures that the case, when presented to the prosecutor, is as solid a case as it can be from both a technical as well as a criminal standpoint.

There is another type of teamwork that I want to mention, the teamwork between agencies whether they are federal or state. As Pam mentioned in her introduction earlier, I spent six years with the Indiana Department of Natural Resources or DNR. During that time, I had the opportunity to work closely with that agency's Division of Law Enforcement and its conservation officers. I had the opportunity to work with the officers in the investigation of cases dealing with traditional environmental violations such as the Clean Water Act and RCRA.

I also became involved with other natural resources criminal violations in areas such as the Migratory Bird Treaty Act, Endangered Species Act, illegal taking of wild animals, wetland

regulation, pollution of our public waterways, fish kills, oil and gas regulation and surface mining. In all of these criminal actions, the cooperation among DNR, IDEM, our sister agencies in neighboring states and our colleagues at the federal level proved critical to the successful prosecution of the violators.

The **Indiana Department of Natural Resources** brought one major criminal action against the unlawful sale of reptiles and amphibians. It included an undercover operation, encompassed 14 states and took three years.

Simultaneous raids were conducted in Indiana, Michigan, Pennsylvania, Florida, Ohio, California, South Carolina and Iowa, where search warrants were served and arrests were made. Eight search warrants were served in Indiana during which time 258 reptiles and amphibians were confiscated. Thirty-one felony and misdemeanor arrest warrants were served on 31 individuals in 11 Indiana counties.

What I have discovered as a result of my positions with both agencies – IDEM and DNR – is that each agency has its own strengths when it comes to enforcement authorities.

For example, in Indiana the DNR has full law enforcement authority, with a complement of conservation officers who are empowered to charge and arrest violators. IDEM does not have this enforcement authority.

However, IDEM has a stronger statutory civil penalty than that given to DNR.

Therefore, when making decisions as to how to proceed with a particular criminal case, it is imperative to judge on a case-by-case basis, choosing the most effective enforcement tool. This applies not only to sister state agencies but to our federal enforcement partners, too.

An excellent example of this is the Indiana Interagency Environmental Crimes Task Force, which has been in existence since early 1990.

This task force, comprised of representatives from the United States Attorney's Office, EPA's Criminal Investigation Division, the Federal Bureau of Investigation, the U.S. Fish and Wildlife Service, DNR, IDEM, the Indiana Office of the Attorney General and the Marion County Prosecutor's Office, meets bi-monthly. The purpose of the task force is to coordinate responses to significant criminal environmental cases within Indiana.

An excellent example of the task force's effectiveness was demonstrated in the 1994 case against the David R. Webb Corporation.

The U.S. Attorney for the Southern District of Indiana filed a one-felony count charge – involving 220 violations – against an international veneer lumber company for violation of the federal Clean Water Act.

The series of events that led to this charge included the illegal discharge of pollutants into the Blue River in southern Indiana, one of – if not the most – scenic rivers in Indiana and one of only

three rivers designated as scenic or recreational in Indiana. The investigation found that on more than 220 dates the lumber company discharged industrial wastewater into the Blue River. The **DNR**, IDEM and the U.S. EPA Criminal Investigation Division conducted a coordinated investigation and our local U.S. Attorney filed the case. To make a long story short, the corporation pled guilty before a federal magistrate, who handed down a two-year suspended sentence and assessed a \$1.1 million fine. Although the court suspended \$100,000 of the fine, IDEM and DNR each received a portion of the fine -- \$250,000. DNR used it to pay for an attorney dedicated to fish kill violations and violations of the natural resource damages and for equipment and training for investigators. The federal government received \$25,000.

Another key to effective enforcement is coordination between civil and criminal regulators and investigators in a parallel proceeding. At one time it was believed that the agency had to choose which action to pursue . . . criminal or civil. This is not the case.

Many cases have been successfully prosecuted criminally while the civil case proceeded right here at IDEM or across the street at the Attorney General's office.

The law is clear. All information obtained in the course of the criminal investigation may be used for the civil case and vice-versa, as long as the investigations are independent and one is not used to further the other in violation of the defendant's rights. Information sharing is critical to the success of these cases and the civil and criminal teams should coordinate their activities to best serve the interests of the public and the environment.

In Indiana, we have been involved in several federal grand jury investigations looking into environmental violations. This is another tool in the arsenal of the criminal team. Because this process is often long and, of course, secret, it is totally independent of the civil investigation, which may proceed in due course through the courts.

The point I have tried to stress here is that teamwork, both within your own agency as well as between agencies, is absolutely essential to the successful investigation and prosecution of criminal violators.

I would like to thank Jim Triner, Greg Spalding and Mary Ann Morrow of MEEA for their support of the states and their tireless efforts to ensure that the important work of the association continues. In addition, I'd like to thank all of you for your attendance, and helping to ensure the success of the training course.

The training you receive this week will provide you with truly valuable information and insight into the field of criminal enforcement and the value of working together as a team, not only within your own agencies, but across agencies and states as well. Jim and his staff have worked hard to bring nationally and internationally known instructors to this course. The agenda looks full, varied and exciting.

Again, thank you for inviting me to spend a few minutes with you. It was nice to be in the company of so many other public servants from the Midwest who dedicate themselves day in

and day out to protecting our environment. Have a good meeting and I hope you enjoy your visit to Indianapolis.